

ASSAM GENERAL SALES TAX ACT, 1993

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An Act to amalgamate, consolidate and amend the laws relating to the levy of tax on the sale or purchase of goods in the State of Assam; Preamble - Whereas it is expedient to amalgamate, consolidate and amend the Assam Sales Tax Act., 1947, (Assam Act, XVII of 1947), the Assam Finance (Sales Tax) Act, 1956 (Assam Act XI of 1956), The Assam (Sales of Petroleum and Petroleum Products, including, Motor Spirit and Lubricants) Taxation Act, 1955 (Assam Act IX of 1955) and the Assam Purchase Tax Act, 1967 (Assam Act XIX of 1967) in

the manner hereinafter appearing - In preamble the main object of the Act is set out. A preamble to a Statute is a preliminary statement of the reasons which have made the passing of statute desirable. The words and phrases used in the Preamble are recital and intend to explain the mind of the Legislatures and the mischief which has been intended to be remedied. The title and preamble whatever their value be as aids to construction of statute undoubtedly throw light on the intent and design of the Legislature and indicate the scope and purpose of the legislation itself. (Poppatlal Shah vs. State of Madras (1953 4 STC 188 SC.) It is hereby enacted in the Forty-Fourth Year of the Republic of India as follows

CHAPTER 1 PRELIMINARY

1. Short title, extent and Commencement :-

(1) This Act may be called the Assam General Sales Tax Act, 1993.

(2) It extends to the whole of the State of Assam.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for the different provisions of the Act. Enforcement of the Act - The Assam General Sales Tax Act, 1993 received the assent of the Governor on the 14th May, 1993. The said Act came into force with effect from the 1st day of July, 1993 except the provisions of Sec. 5 and Sec. 20 vide Notification. No. FTX.177/89/211 dt. 11th June, 1993 published in the Assam Gazette Extraordinary dt. 11th June, 1993. Sales Tax - Sales Tax ordinarily means tax on sale of certain commodities made by a dealer. But broadly speaking Sales Tax means a tax which includes within its scope all business sales of tangible personal property either at the retailing, wholesaling or manufacturing stage with exceptions noted in the taxing law. (Haig and Shoup - Sales tax in American States). Although we come across various definitions of Sales tax, the one given by Professor John F. Due may be said to be most comprehensive. According to Prof. Due Sales tax is "a levy imposed upon the sales or elements incidental to the sales, such as receipts from them of all or a wide range of commodities, excluding taxes imposed at fractional rates upon gross receipts in the form of business occupation or licence Taxes." (Due, J. F-Sales Taxation.) In practice what constitutes sale is slightly different and depends on respective taxing statutes of the States. Sales tax is a tax on the sale of goods as clearly mentioned in the Preambles to the various acts and in the relevant charging sections. It cannot be considered a tax on the goods themselves. (Tata Aircraft Ltd. vs. Member, Board of Revenue (1962) 13 STC 388 Cat.) Purchase Tax - Whenever the legislature wanted to refer to the sales tax payable by the seller, the expression is used as tax on the sale of goods and when it wanted to realise tax from the purchaser the expression used was tax on the purchase of goods. In simple language it can be said that a Sales Tax is a tax levied on the occasion of sale while a purchase tax is a tax levied on the occasion of a purchase. Previously separate Act, namely the Assam Purchase Tax Act, 1967 was in force. But the said Act has been amalgamated with the Assam General Sales Tax Act, 1993 and tax is collected from the last purchaser at the rate specified in Schedule V of the new act. Legislative history - Before the commencement of the Constitution of India the State Governments in India for the first time derived power to levy tax under section 100 (3) of the Government of India Act, 1935. The Act introduced a large degree of autonomy in the provinces. Although the provinces derived power to levy tax, there were certain restrictions for the imposition of tax on the newspaper and on sale or purchase in the course of inter-state trade and commerce, on the Sales outside the State and on the export or import of the goods. After coming into force the Constitution of India with effect from 26th January, 1950 the power conferred on the State Legislatures to enact laws in respect of taxes to be levied on the sale or purchase of goods other than News Papers by virtue of Article 246(3) of the Constitution of India read with Entry 54 of list - II of the seventh schedule. The law enacted by the legislature have to specify the commodity to be taxed and the rate of tax. Like other states of India the Government of Assam for the first time with a view to levy tax on Sale of goods enacted The Assam Sales of Motor Spirit and Lubricants Taxation Act, 1939 (Assam Act IV of 1939). To raise additional and substantial revenue from taxation of Sales of goods in Assam the State Legislature passed another Act the Assam Sales Tax Act, 1947 which received the assent of the Governor General on 7th December 1947. The Assam Sales Tax Act, 1947 came into force with effect from 24th December 1947. So far the type of Assam Sales Tax is concerned it was originally general type of sales tax in the sense it levied tax on the sale of goods covered under The Assam Sales of Motor Spirit and Lubricants Taxation Act, 1939. On the other hand goods exempted from levy of tax under the Act were specially mentioned in the schedule. In the year 1956 a new Act namely the Assam Finance (Sales Tax) Act, 1956 came into force with effect from 1-7-56 with the aim to impose tax on Sales of Cigarettes, Cigars, smoking tobacco in sealed containers, sugar, matches, bidi and finished tobacco used in the manufacture of bidi and other commodities in Assam. A number of commodities were brought under the statute liable to tax at different rate varying from 7 paise in a rupee to 40 paise in a rupee. Tax under this statute was levied at the point of first sale in the state. In order to repeal the Assam Sales of Motor Spirit and Lubricants Taxation Act, 1939 (Assam Act IV of 1939) and to reenact one to impose tax on sales of Petroleum and Petroleum Products, including Motor Spirit and lubricants for the purpose of making an addition to the Public revenue, the State of Assam in the year 1956 enforced another Sales Tax Statute namely The Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955 which came into force with effect from 1-5-56. In the year 1968 an Act namely The Assam Purchase Tax Act, 1967 (Assam Act No. XIX of 1967) was enforced with effect from 29-5-68 to provide for the levy of tax on the purchase of certain commodities in

Assam. Tax under the Act was levied at the point of last purchase of taxable goods made by dealer in the state. Prior to the enactment of The Assam General Sales Tax Act, 1993 the following sales tax statutes passed by State Legislature were in force in the State (1) The Assam Sales Tax Act, 1947 (2) The Assam Finance (Sales Tax) Act, 1956 (3) The Assam (Sales of Petroleum and Petroleum Products including Motor Spirits and Lubricants) Taxation Act, 1955 (4) The Assam Purchase Tax Act, 1967. The attempt to consolidate various Sales Tax statutes prevalent in different States in India into one was the subject matter of discussion for last few years with the sole objective in mind that it will reduce unnecessary duplication of work in respect of assessment, collection of Taxes by assessing authorities and on the other hand the assesses will also be relieved from the duplication of work. The Union Government with this objectives had prepared a model draft of Sales Tax bill to be considered and adopted by different states in India with certain modifications as per requirements of respective states. The Assam General Sales Tax Act, 1993 (Act No XII of 1993) has been passed to consolidate the four Sales Tax Statutes passed by State Legislature. In fact the existing Sales Tax Statutes have been amalgamated at one place with modification and amendment for administrative efficiency. The existing Act amalgamated with the new Act have been repealed with effect from the 1st day of July 1993. However all pending works and assessment etc, prior to 1st July shall be completed under the old Acts as per their provisions, rules and notifications. Point of levy of Tax - Under the repealed Sales tax statutes the point of levy of tax on the sale of goods in the State was 'Single Point' collected either on the first sale made by a dealer in the State or on the last sale made by a dealer in the State. For example taxes under the Assam Finance (Sales tax) Act, 1956, the Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and lubricants) Taxation Act, 1955 were collected on the first sale made by a dealer in the state. On the other hand tax under the Assam Sales Tax Act, 1947 was collected on the last sale made by a dealer in the State. Tax under the Assam Purchase Tax Act, 1967 was collected from the last purchaser in the State. Under the Assam General Sales Tax Act, 1993 besides first and last point, double point tax system has also been introduced on few selected categories of goods. Fourteen categories of goods are prescribed under its Schedule IV, tax on which shall either be collected at the point of first sale made in the State or at first and last sale made in the State in respect of such goods depending upon the Status of the dealers. Tax shall be collected at the point of first sale in the State if the sale is made to persons other than registered dealers. On the other hand if the sale is first effected in the state to registered dealer certain percentage of tax shall be collected at the point of first sale in the State from such registered dealer and also at the point of last sale in the State. For example, steel safe Almirah has been made taxable at the rate of 14%. If the same is first sold in the State to persons other than registered dealers 14% tax shall be collected at the point of first sale in the State. On the other hand if the same steel safe Almirah is first sold in the State to a registered dealer in that case 8% tax shall be collected on such sale at the point of first sale and the balance 6% tax shall be collected at the point of last sale in the State.

2. Definition :-

In this Act, unless the context otherwise requires:

(1) "Appellate Authority" means the Authority authorised by the State Government under sub-section (5) of section 3 to hear and decide appeals under section 34.

(2) "Appointed Day" means the date or dates appointed for the commencement of the provisions of this Act under sub-section (3) of the section 1.

(3) "Assessing Officer" means any person appointed to assist the Commissioner under sub section (1) of section 3 to whom all or any of the powers of the Commissioner for the levy and collection of tax conferred by or under this Act or rules framed thereunder has been delegated by the Commissioner under sub section (3) of that section.

(4) "Assessment" means an assessment or reassessment of tax payable under this Act.

(5) "Business" includes-

(I) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with the motive to make gain or profit and whether or not any gain or profit accrues therefrom :

(II) the execution of any works contract or transfer of the right to use any goods for any purpose under a lease; and

(III) any transaction including the rendering of any service in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure, concern, works-contract or lease, or to the setting up of any such business; Trade - The word Trade has not been defined in the Act. According to Chambers English Dictionary trade a practice : an occupation, way of livelihood esp. Skilled but not learned : Shopkeeping: commerce: buying and selling: a craft: men engaged in the same occupation. According to oxford shorter Dictionary trade is the practice of some occupation, business or profession habitually carried on, specially when practised as a means of livelihood of gain. According to New websters Dictionary trade means a purchase, sale or exchange; a bargain or deal. Trade indicates a process of buying and selling; it may also mean a calling or industry or class

of skilled labour. (Skinner Vs. Jack Breach Ltd. (1927) 2 Kb 220. Trade in its primary meaning is the exchanging of goods for goods or goods for money; and in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts or learned professions and from Agriculture, 'Business' is a wider term and means practically anything which is an occupation as distinguished from pleasure (National Union Vs. M.R. Meher, AIR 1960Bom. 22). In the case of G Venkataswami Naidu and Co. Vs. C.I.T. (1959) 35 ITR 594 the Supreme Court laid down the tests whether a transaction is in the nature of trade and in deciding the character of such transactions several factors are treated as relevant such as whether the purchaser was a trader and the purchase of the commodity and its resale were allied to his usual trade or business or incidental to it; the nature and quantity of the commodity purchased and thereby make it more readily resalable; and act prior to the purchase showing a design or purpose, the incidents associated with the purchase and resale, the similarity of the transaction to operations usually associated with trade or business; the repetition of the transaction; the element of pride of possession. A person may purchase a piece of art, hold it for some time and if a profitable offer is received sell it. During the time that the purchaser had its possession he may be able to claim pride of possession and aesthetic satisfaction; and if such a claim is upheld that would be a factor against the transaction being in the nature of trade. An adventure in the nature of trade clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but not by all of them; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade. This statement may be true; but in its application due regard must be shown to the requirement that the single plunge must be in the waters of trade. In other words, at least some of the essential features of trade must be present in the isolated or single transaction. On the other hand, it is sometimes said that the appearance of one swallow does not make a summer. This may be true if, in the metaphor, summer represents trade; but it may not be true if summer represents and adventure in the nature of trade it is obviously referring to transactions which individually cannot themselves be described as trade or business but are essentially of such a similar character that they are treated as in the nature of trade. No decisive tests can be evolved for all cases for determining whether a person carried on trade or not. The question must in each case be determined on a consideration of the nature of the trade, the various steps taken for carrying trade and other relevant facts. (State of Punjab Vs. Bajaj Electricals Ltd. (1970) 25 STC 825 SC. Commerce-According to chambers English Dictionary commerce means interchange of merchandise on a large scale between nations or individuals: extended trade of traffic: intercourse. According to Blacks Law Dictionary commerce includes not only the purchase, sale and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the transportation of persons as well goods both by land and sea. In the case of Gannon Dunkerley and Co. Vs. State of Madras (1954) 5 STC 216,244 (Mad) affirmed in (1958) 9 STC 353 SC it was observed that in common parlance, trade and commerce carry with them the idea of purchase and sale with a view to make profit. If a person buys goods with a view to sell them for profit, it is an ordinary case of trade. If the same activity is on a large scale, it is called commerce. However nobody can define the volume of business which would convert a trade into commerce. Manufacture - The word Manufacture comes from two Latin words 'Manu' means hand and 'facere' means made, Manufacture according to chambers English Dictionary means to make, originally by hand now usually by machinery and on a large scale: to fabricate, concoct: to produce unintelligently in quantity. Manufacture implies a change, but every change in the raw material is not manufacture. There must be such transformation that a new and different article must emerge having a distinctive name, Character or use. (South Bihar Sagar Mill vs. Union of India AIR 1968 SC 922) It does not mean that the materials with which the thing is manufactured must necessarily lose their identity. (North Bengal Stores Ltd. Vs. Member Board of Revenue, Bengal (1946 1 STC 157Cal). The word manufacture in ordinary acceptance has a wide connotation, it means making of articles or materials commercially different from the basic components by physical labour or mechanical process (Commissioner of Sales Tax Vs. Sukh Deo, AIR 1969 SC 499). Manufacture in its ordinary connotation, signifies emergence of new and different goods as understood in relevant commercial circles (CST Vs. Jagannath Cotton Company and Anr. (1995) 99 STC 83 SC.

(6) "Commissioner" means a person appointed to be the Commissioner of Taxes under sub section (1) of, section 3;

(7) "Company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956) :

(8) "Contractee" means any person at whose instance or for whose benefit a works-contract is executed ;

(9) "Contractor" means any person executing a works contract and includes a sub contractor ;

(10) "Dealer" means any person who carries on the business of selling or purchasing goods in the State and includes - (I) Government and local authority;

(11) A cooperative society or a club or any association which supplies goods to its members or which sells goods supplied to it by its members; (III) a factor, a broker, a commission agent, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of purchasing or selling goods and who has, in the customary of business, authority to purchase or sell goods for and on behalf of, or belonging to principals whether resident within or outside the State; and includes a person delivering goods on hire purchase or any system of payment by instalment or making any sale within the meaning of clause (33) of this section: (IV) a contractor or a

lessor;

(10a) 'Casual Dealer' means a person, other than a registered dealer, who has no fixed place of business in the state and who, whether as principal agent or in any other capacity undertakes occasional transactions involving buying, selling, supplying or distribution of goods in the State whether for cash or for deferred payment or for commission remuneration or other valuable consideration. (Insertedp with effect from 17-7-2000 vide Assam Act No. IV of 2000)

(11) "declared goods" means goods declared under section 14 of the Central Sales Tax Act, 1956 (74 of 1956), to be of special importance in inter-State trade or commerce and the sale of which is taxable under this Act;

(12) "Director" in relation to a company has the meaning assigned to it in the Companies Act, 1956 (1 to 1956);

(13) "financial lease" means a lease, normally irrevocable, that transfers substantially all the risks and rewards incidental to the ownership of an asset which may or may not be eventually transferred;

(14) "firm, partner and partnership" have the meaning respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932);

(15) "goods" means all kinds of movable properties other than newspapers, actionable claims, stocks, shares or securities;

(16) "Government" means the Central Government or the Government of any State or Union Territory in the Indian Union; . %

(17) "gross turnover" in respect of any period means the aggregate of the sale prices received or receivable or purchase of goods effected by him during such period;

(18) "hire purchase" means an agreement under which goods are let on hire and the hirer has the option to purchase the goods in accordance with the terms of the agreement and under which

(i) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments ;

(ii) the property in the goods is to pass to such person on the payment of the last of such instalments; and

(iii) such person has the right to terminate the agreement at any time before the property so passes :

(19) "lease" means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another whether or not for a specified purpose for cash deferred payment or other valuable consideration without the transfer of ownership and includes a sublease but does not include any transfer on hire purchase or any system of payment by instalments ;

(20) "lessee" means any person to whom the right to use any goods for any purpose is transferred under a lease;

(21) "lessor" means any person by whom the right to use any goods for any purpose is transferred under a lease;

(22) "manufacture" with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, blending, finishing or otherwise processing, treating or adapting any goods; but does not include a works contract or such manufactures or manufacturing processes as may be prescribed;

(23) "month" means the month according to the English calendar;

(24) "Official Gazette" means the Official Gazette of the Government of the State;

(25) "operating lease" means a lease other than a financial lease;

(26) "person" means any individual or association or body of individuals and includes a department of the Government, a Hindu undivided or joint family, a firm and a company whether incorporated or not, or a public sector undertaking;

(27) "prescribed" means prescribed by rules under this Act;

(28) "Principal Officer" used with reference to a company or association, means the Secretary, Manager, Managing Agent or Managing Director of the Company or the Manager of the association and includes any person connected with the management of the affairs of the company or association upon whom the Commissioner has served a notice of his intention of treating him as the Principal Officer thereof;

(29) "public servant" has the same meaning as in section 21 of the Indian Penal Code, 1860 (45 of 1860);

(30) "purchase price" means the amount paid or payable by a dealer as valuable consideration for the purchase of goods determined in the prescribed manner;

(31) "registered dealer" means a dealer registered under the provisions of this Act;

(32) "rules" means the rules framed under this Act;

(33) "sale" with all the grammatical variations and cognate expressions means any transfer of property in goods by any person for cash, deferred payment or other valuable consideration, and includes

(i) any transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(ii) any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works-contract;

(iii) any delivery of goods in hire purchase or any system of payment by instalments or under a financial lease;

(iv) any transfer of the use of any goods under an operating lease;

(v) any supply of goods by an unincorporated association or a body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) any supply, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration; and such delivery, transfer or supply of any goods shall be deemed to be sale of those goods by the person making the delivery, transfer or supply and a purchase of those goods by the person to whom such delivery, transfer or supply is made, but does not include a mortgage, hypothecation, charge or pledge; Explanation - 1 A sale or purchase shall be deemed to have taken place in the State - (a) In a case falling under sub clause (ii), if the goods are in the State at the time of their use, application or appropriation for the execution of the works contract notwithstanding that the agreement for the works contract has been wholly or in part entered into outside the State or that the goods have been, wholly or in part, moved from outside the State; (b) In a case falling under sub clause (iii), if the goods are delivered for use in the State; (c) In a case falling under sub clause (iv), if the goods are used by the lessee within the state during any period notwithstanding that the agreement for the lease has been made outside the State or that the goods have been delivered to the lessee outside the State; (d) In any other case if the goods are in the State (i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller, whether the assent of the buyer to such appropriation is prior or subsequent to appropriation; Provided that, where there is a single contract of sale or purchase in respect of goods situated in the State as well as in places outside the State, the provision of this Explanation shall apply as if there were a separate contract of sale or purchase in respect of goods situated in the state.

Explanation -2 Notwithstanding anything contained in this Act, two independent sales or purchase shall, for the purpose of this Act, be deemed to have taken place- (a) when the goods are transferred from the principal to his selling agent and from the selling agent to his purchaser, or (b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid - (i) to have sold the goods at one rate and passed on the sale proceeds to his principal at another rate; or (iii) not to have accounted to his principal for the entire collection or deductions made by him, in the sales or purchase effected by him on behalf of his principal; or (iv) to have acted for a fictitious or non-existent principal. In Northern India Caterers (India) Ltd. vs Lt. Government of Delhi 42 STC 386 SC, the Supreme Court held that the supply of meals in a hotel or restaurant to non residents was essentially in the nature of service provided to them and could not be identified as a transaction of sale. But in forty sixth Amendment to the Constitution of India made in the year 1982 clause 29A was inserted in Article 366 of the Constitution of India. Sub-Clause (f) of Clause 29A specifies that tax on the supply by way of or as part of any service or in any other manner whatsoever of goods being goods or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration would also be a tax on sale or purchase of goods.

(34) "sale price" means -

(a) In respect of a sale falling under sub clause (ii) of clause (33) the consideration received or receivable by the dealer in respect of any works contract executed or under execution by him as increased by the market price of any goods supplied or to be supplied to him free of cost or the excess of the market price over the price charged on any goods supplied or to be supplied to him at a concessional rate by the contractee or any other person for use, application or appropriation in the works-contract; Explanation - For the purposes of this sub clause, all contracts in relation to the same works, whether between the same or different persons, shall be deemed to be single contract, and the person, on whom the Commissioner has served a notice of his intention so to treat him, shall be deemed to be the contractor and all the other persons shall be deemed to be sub-contractors of such contractor;

(b) in respect of a sale falling under sub-clause (iii) of clause (33) the price which the goods would have fetched if sold on the date they were delivered;

(c) in respect of a sale falling under sub-clause (iv) of clause (33), the consideration received or receivable by the dealer in respect of the lease; Explanation - For the purposes of this sub-clause the consideration received or receivable by the dealer shall include such amount as may be determined in the prescribed manner in respect of any lump sum payment of whatever nature received or receivable by him in consideration of the lease.

(d) In respect of a sale under any other sub-clause of clause (33), the amount received or receivable by a dealer as valuable consideration for the sale of goods including any sum charged, whether stated separately or not for anything done by the dealer in respect of the goods at the time of or before delivery thereof or undertaken to be done after the delivery whether under the contract of sale or under a separate contract but excluding

(i) the cost of outward freight, delivery, or installation or interest when such cost or interest is separately charged, subject to such conditions and restrictions as may be prescribed, and

(ii) any sum allowed as a cash/discount according to ordinary trade practice;

(35) "State" means the State of Assam;

(36) "tax" means the tax payable under this Act on the sale or purchase of goods and includes any tax payable on the transfer of property in goods (whether as goods or in any other form) involved in works-contract or on the transfer of the right to use any goods for any purpose;

(37) "Tribunal" means the Assam Sales Tax Appellate Tribunal appointed under section 5;

(38) "works contract" means and includes any agreement for carrying out....

(i) the construction, fitting out, improvement or repair of any building, road, bridge, dam or other immovable property; or

(ii) the installation, fabrication, assembling, commissioning or repair of any plant or machinery, whether or not affixed to any building or other immovable property; or

(iii) the overhauling or repairing or dismantling of (a) any motor vehicle, (b) any sea-going vessel, (c) any other vessel propelled by mechanical means; (d) any aircraft; or (e) any equipment or necessary part of any of the aforesaid items; or

(iv) the fitting out or fabrication, assembling altering, or reassembling, blending, furnishing, improving, processing or otherwise treating or adapting any goods; and

(v) the supply of goods and provision of know how, designs, labour supervision inspection, training or other services in connection with any of the operations mentioned in sub-clauses (i) to (iv) above.

CHAPTER 2

TAX AUTHORITIES AND APPELLATE TRIBUNAL

3. Tax Authority :-

(1) For carrying out the purpose of this Act, the State Government may by notification appoint a person to be the Commissioner of Taxes, together with such other persons to assist him as it thinks fit and may specify the area or areas over which they shall exercise jurisdiction.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(3) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers under this Act to any person appointed to assist him under sub-section (1).

(4) Notwithstanding anything contained in sub-section (1), the Commissioner may transfer any case or matter from any person appointed under sub-section (1) to assist him to any other person so appointed whether such other person has jurisdiction over the area to which the case or matter relates or not, provided he is otherwise competent to deal with such case or matter in exercise or performance of the powers or duties referred to in sub-section (2).

(5) The State Government may authorise an officer, not below the rank of a Deputy Commissioner of taxes appointed under sub-section (1) to exercise the power and perform the functions of the appellate authority under section 34. Sub-Section (6) deleted and sub-section (7) renumbered as (6) w.e.f. 1-6-99 vide notification No. LGL. 114/97/77 dt. 1st June 1988 Published in the Assam GazetteExtraordinary dt. 1st June, 1988. Prior to deletion sub-section (6) read as follows : Persons appointed under sub section (1) shall exercise such powers as may be conferred and perform such duties, as may be required by and under this Act.

(6) Where any case is transferred to an Assessing or Appellate Authority under Sub-section (4) such authority may deal with the case either de novo or from the stage at which it was transferred.

4. Jurisdiction of Tax Authority not to be called in question :-

No person shall be entitled to call in question the jurisdiction of any authority under section 3 after the expiry of ninety days from the date of the receipt by him of any notice under this Act from such authority.

5. Assam Sales Tax Appellate Tribunal :-

(1) There shall be an Assam Sales Taxes Appellate Tribunal consisting of such members, including a President, as the State Government may from time to time, deem it necessary to appoint from amongst....

(a) the persons who are qualified to be judges of the High Court, and serving or retired person;

(b) and the serving or retired person belonging to the Assam Taxation Service who hold or have held a post not below the rank of Deputy Commissioner of Taxes. Provided that where the Tribunal consist of one or more persons who is or are members of the Assam Judicial Services, then he or the seniormost amongst them shall be appointed as President.

(2) The member of the Tribunal including the President so appointed may continue as such till he attains the age of sixty two years.

(3) No decision or action of the Tribunal shall be called in question merely on the ground of any vacancy in the Tribunal.

(4) The function of the Tribunal may be discharged by any of the members sitting in benches of two or more members as may be determined by the President.

(5) If the members of a bench are divided, the decision shall be the decision of the majority, if there be a majority, but if the members are equally divided they shall state the point or points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the members of the Tribunal and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it.

(6) Subject to such conditions and limitations as may be prescribed, the Tribunal shall have the power to award costs in any matter decided by it and the amount of such costs awarded against a dealer shall be payable by him as if it were tax due from him in the manner provided in Chapter VII and the amount of such costs awarded against any authority under the Act shall be payable to a dealer by such authority in such manner as may be prescribed.

(7) Subject to the previous sanction of the State Government the Tribunal shall, for the purpose of regulating its procedure (including the place or places at which the Tribunal, the benches or the members thereof shall sit) and providing the rules of business, make regulations under this Act and the rules made thereunder. The provision of Sec. 5 has not come into force alongwith other provisions of the Act vide Notification No. FTX. 177/89/211 dt. 11th June, 1993 published in the Assam Gazette Extraordinary dt. 11th June. 1993.

5A. Appeal to the Assam Board of Revenue :-

Until the Assam Sales Tax Appellate Tribunal is constituted under section 5, appeals against orders under section 34 and section 36 may be preferred before the Assam Board of Revenue.

5B. Procedure of Appeal :-

(1) Any dealer, aggrieved by an order passed in appeal under section 34 or in revision under section 36, may appeal to the Assam Board of Revenue within ninety days from the date on which the order has been communicated to him.

(2) The Assam Board of Revenue may admit an appeal after the expiration of the ninety days referred to in sub-section (1) if it is satisfied that for reasons beyond the control of the appellant or for any other sufficient reasons it could not be filed within time.

(3) An appeal to the Assam Board of Revenue shall be in the prescribed form and verified in the prescribed manner, and shall be accompanied by a fee of five hundred rupees.

(4) The Assam Board of Revenue may, after giving the dealer an opportunity of being heard, pass such orders thereon, as it thinks fit and shall communicate such orders to the dealer and the commissioner. Sec 5A and 5B inserted w.e.f. 2-2-2000 vide Assam Act No. XX of 1999 published in the Assam Gazette Extraordinary No. 22. Relevant Rule 39 A

6. Persons appointed deemed to be public servants etc :-

All persons appointed under sub-section (1) of section 3, and sub-section

(1) of section 5 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 to 1860).

CHAPTER 3

INCIDENCE AND LEVY OF TAX

7. Liability to Tax :-

(1) Subject to the other provisions of this Act, every dealer liable to pay tax under any of the laws repealed by this Act shall with effect from the appointed day for the purpose of this section, be liable to pay tax under this Act on all sales or purchases of goods other than goods specified in Schedule

(2) Subject to the other provisions of this Act every dealer to whom sub-section (1) does not apply, shall be liable to pay tax under this Act on all sales or purchases of goods other than goods specified in Schedule 1 with effect from the date immediately following the date on which his gross turnover calculated from the commencement of any year ending after the appointed day first exceeds the taxable quantum at any time within such year. Provided that such dealer shall not be liable to pay any tax under this Act during such year in respect of his turnover upto the taxable quantum.

(3) A dealer registered under the Central Sales Tax Act, 1956 (74 of 1956), who is not liable to pay tax under sub-section (1) or (2) above, shall nevertheless be liable to pay tax on his sale of any goods in respect of which he has furnished a declaration under subsection (4) of section 8 of the said Act, or on the sale of any goods in the manufacture of which such goods have been used and every such dealer who is liable to pay tax shall be deemed to be a registered dealer.

(4) Nothing in sub-section (1), (2) and (3) above, shall be deemed to render any dealer liable to tax on the sale or purchase of goods where such sale or purchase takes place;

(i) Outside the State;

(ii) in the course of the import of the goods into or export of the goods out of the territory of India; or

(iii) in the course of inter-State trade or commerce

(5) Every dealer who has become liable to pay tax under this Act shall continue to be liable until the expiry of three consecutive years during each of which his gross turnover has failed to amount to or exceeds the taxable quantum and on the expiry of this period his liability to pay tax under this Act shall cease.

(6) Every dealer whose liability to pay tax under this Act has ceased under the provision of sub-section (5) shall again be liable to pay tax with effect from the first day of April of the year during which his gross turnover again amounts to or exceeds the taxable quantum;

(7) For the purpose of this section "taxable quantum" means:-

(i) in the case of a dealer who has more than one place of business in the State or, who is an importer or a manufacturer or a casual dealer or non-resident dealer or an agent of a non resident dealer or a dealer in whose case the tax is leviable at the point of last purchase... Nil.

(ii) in the case of a dealer, being a lessor under an operating lease..... Rs 100000/-

(iii) in respect of any other dealer or contractor or lessor... Rs 100000/-

(8) Notwithstanding anything contained in any other provisions of this Act, any dealer dealing in exempted goods as specified in Schedule I shall also be liable to pay tax on the sale value (expressed or implied) of containers used in selling such exempted goods, to be determined in the manner as may be prescribed. Rs. 100000/- substituted for Rs. 50000/- in clause (ii) and (iii) of sub section (7). Sub section (8) newly inserted w.e.f. 1-6-99 vide notification No. LGL 114/97/77 dt. 1st June 1999 and published in the Assam Gazette Extra ordinary dt. 1-6-99.

8. Charge of tax and rates :-

(1) The tax leviable under section 7 for any year shall be charged on the taxable turnover during such year -

(a) in respect of goods specified in Schedule II, at the first point of sale within the State, at the rate or rates specified in that Schedule; Explanation- 1 : Where a person sells a substantial part of the goods manufactured by him or imported by him to another person for sale under the brand name or such other person or for resale as distribution or selling agent or for resale after repacking or subjecting the goods to any other process not amounting to manufacture and the price charged on resale exceeds the sale price by more than such percentage as may be prescribed in respect of such goods or class of goods, the resale by such other person shall subject to rules if any, framed in this behalf, be deemed to be at the first point of sale within the State. Explanation - 2 : When an Oil Company, as may be specified in the rules, sells within the State of Assam its products, as mentioned in Serial numbers 65,66,67,68,69 and 70 in Schedule II, to any other Oil Company registered under the Assam General Sales Tax Act, 1993, for the purpose of re-sale of the same within the State by such purchasing Oil Company, such inter se-sale between the Oil Companies shall not be treated as first point of sale for the purpose of levying tax and tax shall be levied, subject to such conditions as may be prescribed, on the purchasing Oil Company when they re-sale the goods within the State.

(i) If, in any case, after the purchase of such goods for resale within the State, the Purchasing Oil Company despatches any portion of the goods to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce, then notwithstanding anything contained in this Act, for that portion of the goods the Purchasing Oil Company shall be deemed to be the last purchaser within the State and

it shall be liable to pay tax on such portion of goods at such rate as may be specified in Schedule V. Explanation 3(i): In case of potable liquors mentioned in serial number 27A in Schedule II, except country spirit, the licensee of the bonded warehouse who sells these items to a wholesale licence holder or to a retailer holding 'on' or 'off' licence, shall be deemed to be the first point seller, irrespective of whether he imports such items from outside the State or he purchases such items from a manufacturer or a bottling unit or another bonded warehouse within the State and he shall be liable to pay tax on the sale price of such items, as defined in clause (34) of section 2 including excise duty, countervailing duty, import fee, transport fee and any other duty or fee, by whatever name called, payable thereon, irrespective of whether such duty is payable by the licensee of the bonded warehouse or the wholesale licence holder or the retail licence holder. The retail licence holder while depositing the excise duty shall also deposit the tax payable under this Act into the Government Account in the prescribed manner by a separate challan and hand over one copy of the challan to the bonded warehouse.

(ii) In case of country spirit mentioned in serial number 27A, in Schedule II, the officer in-charge of the country spirit excise warehouse who sells or supplies such items to a licensed retail vendor shall be deemed to be the first point seller who shall be liable to pay tax on the sale price of the item as defined in clause (34) of section 2 including excise duty, vend fee, bottling charges and any other duty or fee, by whatever name called, payable thereon. The retail vendor while depositing the cost price and excise duty shall also deposit the tax payable under this Act into the Government Account in the prescribed manner by a separate challan and hand over one copy of the challan to the officer in-charge of such warehouse. Para to Explanation-2 and Explanation-3 inserted vide Assam Act No. XI of 2002 Published in the Assam Gazette Extraordinary dt. 10-5-2002 Explanation 2 to Section 8(1) (a) inserted w.e.f. 5-6-98 vide Assam Act N0- VIII of 1998 published in the Assam Gazette Extraordinary dt. 5-6-98 Explanation 3 substituted w.e.f. 3-5-2003 vide Notification No. LGL.114/97/ 118 dt. 3-5-2003 and Published in the state Gazette Extraordinary dt. 3-5-2003. Prior to substitution this explanation read as follows : Explanation 3(i) in case of potable liquors mentioned in serial number 27A in Schedle-II, except country spirit, the licence of the bonded warehouse or wholesale licence holder who sells these items to a retailer holding 'on' or 'off' licence shall be deemed to be the first point seller, irrespective of whether he imports such items from outside the State or he purchases such items from a manufacturer or a bottling unit or another bonded warehouse within the State and he shall be liable to pay tax on the sale price of such items, as defined in clause (34) of section 2 including excise duty or countervailing duty payable thereon, irrespective of whether such duty is payable by the licence of the bonded warehouse or the wholesale licence holder or the retail licence holder;

(iii) in case of country spirit mentioned in serial number 27A, in Schedule- II, the licensed contractor who sells or supplies such items to a licensed retail vendor shall be deemed to be the first point seller who shall be liable to pay tax on the sale price of the item as defined in caluse (34) of section 2 including still head duty payable thereon. The retail vendor while depositing the cost price and duty shall also deposit the tax payable under this act in the designated bank by challan and handover one copy of the challan to the contractor.

(b) in respect of goods specified in Schedule III, at the point of last sale within the State, at the rate or rates specified in that Schedule;

(c) in respect of goods specified in Schedule IV, at such point or points of sale and at such, rate or rates specified in that Schedule;

(d) in respect of goods specified in Schedule V, at such point or points of purchase and at such rate or rates specified in that Schedule;

(e) in respect of any transfer of property in goods (whether as goods or any other form) involved in a works-contract of the nature specified in Schedule VI, at the Rate or rates specified in that Schedule; and

(f) in respect of any operating lease as specified in schedule VII, at the rate or rates specified in that Schedule,

(2) The State Government may, by notification in the Official Gazette, add to or omit from any Schedule any entry or entries or transpose any entry or entries from one Schedule to another or modify or vary any entry or entries or the rate or rates or the point or points of levy or the deductions specified in any Schedule and, thereupon, such Schedule or Schedules shall be deemed to have been amended accordingly.

(3) For the purposes of this section "taxable turnover" means the gross turnover during the year as reduced by,

(i) the turnover during such year of goods exempted under section 9;

(ii) in respect of goods specified in Schedule II, the turnover during such year of goods which is shown, to the satisfaction of the Assessing Authority, to have been subjected to tax in the state generally at the specified rates or at such lower or zero rate as provided in any other provisions of this Act in respect of sale of such goods. The words generally at the specified rates or such lower or zero rate as provided in any other provisious of this Act in respect of sale of such goods' inserted by Assam General Sales Tax (Amendment) Act, 1997 w.e.f. 1-5-97.

(iii) in respect of goods specified in Schedule III, the turnover during such year of sale to registered dealers of

goods specified in the purchasing dealer's certificate of registration as being intended for resale within the State or of containers or other materials for the packing of such goods;

(iv) in respect of goods involved in any works-contract specified in schedule VI

(a) the turnover relating to declared goods purchased locally in Assam on payment of tax, and

(b) so much of the labour and other charges incurred by the dealer after the transfer of the property in the goods involved in the works contract or at the option of the dealer such percentage towards labour and other charges of the gross turnover after deducting therefrom the turnover relating to declared goods as - specified in that Schedule;

(v) such other amount as may be prescribed and

(vi) from the resultant balance an amount arrived at by applying the following formula - Rate of tax x Resultant balance as mentioned above 100 + rate of tax

Explanation - Where the taxable turnover of a dealer is taxable at different rates or the goods are specified in different Schedules, the aforesaid formula shall be applied separately in respect of each such part of the turnover.

(4) Notwithstanding anything contained in the foregoing provisions of this section, tax shall be payable on the turnover of purchase in the following cases at the same rate at which but for the circumstances mentioned below tax would have been leviable under the foregoing provisions namely :-

(i) where a dealer, in the course of business, purchases any goods (the sale or purchases of which is liable to tax under this Act) from the registered dealer in circumstances in which no tax is payable under this section, or

(ii) where a dealer, in the course of business, purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer; and such goods or the goods in the manufacture of which they have been used are not sold in the State within such period as may be prescribed.

(5) Notwithstanding anything contained in the foregoing provisions of this section where the certificate of registration of a dealer is cancelled on the death of the dealer or the discontinuance or transfer of his business or, where the dealer is a Hindu undivided family, company, firm or other body of individuals, on disruption, liquidation or dissolution, as the case may be or on the discontinuance or transfer of business, subject to such exceptions as may be prescribed, tax shall be payable on all purchases made by the dealer in the State after the registration as remain unsold at the time of such cancellation. Clause (IV)(a) substituted w.e.f. 19-10-2001 vide Assam Act No. XIII of 2001 for the following "The turnover relating to declared goods, and" Relevant Rule -14 8A Levy of additional tax-

(1) Notwithstanding anything contained in this Act, every dealer who is liable to pay tax under this Act shall pay for each year an additional tax on his taxable turnover at the rate of ten percentum of the tax payable by him under any other provisions of this Act; Provided that in calculating the additional tax payable by the dealer, there shall not be taken into consideration the tax payable in respect of :-

(1) the sales or purchases of declared goods;

(ii) the sales of tea by Brokers in auction at Guwahati; and

(iii) the sales or purchases of any goods relating to any period prior to the date with effect from which additional tax is payable.

(2)

(a) the additional tax shall be computed and paid by a dealer alongwith the tax payable under Section 7 at such intervals as mentioned in Section 16 and the corresponding rules prescribed with reference to that section;

(b) *****

(c) As for the year 1998-99, the additional tax shall be payable on and from the date on which the provisions of this Act come into forces.

(3) * * * * *

(4) The provisions of this Act and rules framed thereunder shall, so far as may be, apply in relation to the additional tax payable under this Act. Section 8A inserted w.e.f. 5-6-98 vide Assam Act No. -VIII of 1998 published in the Assam Gazette Extraordinary dt. 5-6-98 The words "if his turnover liable to tax for that year exceeds Rupees three lakhs", from sub section (1); clause (b) of sub-section (2) and sub-section (3) deleted w.e.f. 1-6-99 vide notification No. LGL.114/97/77 dt. 1-6-99 published in the Assam Gazette Extraordinary dt. 1-6-99. Clause (b) of sub-section (2) and sub-section (3) prior to deletion read as follows : (b) In the case of a dealer whose taxable turnover exceeds rupees three lakhs for the first time in any year, the additional tax shall be payable in respect of that year from the first day of the month immediately succeeding the month during which" his taxable turnover exceeds rupees three lakhs; and (3) Notwithstanding anything contained in this

section, no dealer shall be entitled to collect any sum by way of additional tax payable by him under this section.

9. Exemption :-

(1) Subject to the conditions and exceptions, if any, set out in Schedule 1, the sales of goods specified therein shall be exempted from tax under this Act.

(2) The State Government may by notification in the Official Gazette, add to, amend or otherwise modify, the said Schedule and thereupon the said Schedule shall be deemed to have been amended accordingly.

(3) The State government may by notification in Official Gazette make an exemption or reduction in rate in respect of any tax or interest payable under this Act on the sale or purchase of any class of goods specified therein.

(i) at all or any specified point or points of sale in a series of sales by successive dealers; or

(ii) by any specified class of persons in regard to the whole or any part of their turnover.

Provided that any exemption or reduction may extend to the whole of the State or to any specified area or areas therein and be subject to such restrictions and conditions as may be specified in the notification. Provided further that validity of any notification issued under this sub-section shall not exceed a period of three years from the date of its issue.

(4) The State Government may, from time to time by notification in the Official Gazette frame one or more schemes for the grant of relief to any class of industries within the State or within any specified part of the State on or after such date as may be specified in such scheme and producing such goods as may be specified therein by way of full or partial exemption of any tax payable under this Act on the raw materials or other input purchased by them within the State or on the manufactured goods sold by them within the State or in the course of inter-State trade or commerce for such period or periods as may be specified or by way of deferment of the tax payable by them under this Act for such period as may be specified and subject to such other restrictions and conditions as may be provided in such scheme or schemes.

Provided that the State Government may withdraw any such exemption granted under any scheme at any time as it may think fit and proper. Proviso to Sub-Section (4) of Section 9 inserted w.e.f. 2-2-2000 vide Assam Act No. XX of 1999 published in the Assam Gazette Extraordinary No. 22 dt. 2-2-2000.

9A. Set off of tax paid on raw materials in certain cases :-

Where the State Government is satisfied that it is expedient to do so in industrial growth in the State, it may by a notification published in the official Gazette, permit full or partial set off of tax paid in side the State on raw materials which have been used in the manufacture of goods for sale within the State or sale in the course of inter-State trade or commerce against the amount of tax payable on the sale of finished products manufactured in the State from such raw materials subject to such conditions as may be specified in the said notification: Provided that the amount of tax to be set off under this section shall not exceed the amount of tax payable on the sale of such goods, under this Act or under the Central Sales Tax Act, 1956. Inserted w.e.f. 17-5-2000 vide Assam Act No. IV of 2000

9B. Set Off of Tax paid under the Assam Entry Tax Act, 2001 in certain cases :-

If a registered dealer under this Act is also a registered dealer under the Assam Entry Tax Act, 2001 and pays entry tax on any goods mentioned in the schedule to the Act, he shall be subject to the provisions of the rules in this regard, be entitled to get set off of the amount of entry tax paid, from the amount of tax payable by him under this Act for the same goods; Provided that in no case the amount of set off shall exceed the amount of tax payable under this Act. Section 9B inserted w.e.f. 19-10-2001 vide Assam Act No. XIII of 2001.

10. Burden of Proof :-

(1) The burden of proving that in respect of any sale or purchase effected by a dealer, he is not liable to tax under this Act or is liable to tax at a lower rate of tax, or that he is entitled to a deduction in determining the taxable turnover, shall be on him.

(2) Without prejudice to the generality of the foregoing provisions, the State Government may, in respect of matters falling under sub- section (1), by rules prescribe the type of transactions in relation to which and the circumstances and manner in which and the conditions and restrictions subject to which a dealer shall have to furnish documentary evidence by way of a declaration in a prescribed form obtained in the prescribed manner, or otherwise, and such declaration or other document shall constitute prima facie evidence of the facts stated therein. Relevant Rule - 19 Proviso to Sub Section (4) of Section 9 inserted w.e.f. 2-2-2000 by Assam Act No. XX of 1999.

10A. Audit of Accounts of certain dealers :-

Every dealer whose gross turnover in a year exceeds rupees forty lakhs, shall get his accounts audited by a Chartered Accountant and shall submit a copy of the audited statement of account and certificate in such manner as may be prescribed. Relevant Rule - 19A Section 10A inserted w.e.f. 1-6-99 vide notification No. -

CHAPTER 4

REGISTRATION OF DEALERS ETC

11. Compulsory Registration :-

(1) Every dealer liable to pay tax under the provisions of this Act shall get himself registered with the Assessing officer and shall possess a certificate of registration.

(2) Every dealer required by sub-section (1) to be registered shall apply for registration to the Assessing Officer in the prescribed manner and obtain a certificate of registration.

(3) On receipt of an application under sub-section (2) the Assessing Officer shall, if he is satisfied after such inquiry as may be deemed necessary that the application is in order, register the applicant. Relevant Rule - 21, 23

12. Registration by Assessing Officer :-

(1) The Assessing Officer may, in addition to taking any other action under the provisions of this Act, require any dealer who, in his opinion, is liable to registration but has not made an application in this behalf, to apply for registration and register him;

Provided that no action under this sub section shall be taken unless the Assessing Officer has given notice to the dealer of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) The State Government may by rules provide that such a class of dealers carrying on business in such goods or such classes of goods as may be specified therein shall also seek registration notwithstanding that they may not be liable to pay tax under this Act if their gross turnover exceeds such limits as may be prescribed.

(3) Registration made under sub-section (1) or sub-section (2) shall take effect as if it had been made on application under sub-section (2) of section II. Relevant Rule - 22, 23

13. Voluntary Registration :-

(1) Subject to such restrictions and conditions as may be prescribed, any dealer whose total gross turnover during a year amounts to or exceeds such amount as may be prescribed and any person who intends to establish a business in the State for the purpose of manufacturing goods of a value exceeding such amount as may be prescribed may, notwithstanding that he may not be liable to pay tax under section 7 apply in the manner referred to in sub-section (2) of section 11 for registration under this Act.

(2) The provisions of sub-section (3) of section 11 and 14 shall apply in respect of applications for registration under sub-section (1) of this section.

(3) Every dealer who has been registered upon application under this section shall, for so long as his registration remains in force be liable to pay tax under this Act.

(4) The registration effected under the provisions of this section shall be in force for a period of not more than three complete years and shall be deemed to have been cancelled on the expiry of the said three years unless the Assessing Officer on an application made by the dealer in the prescribed manner is satisfied that the provisions of section 11 have since become applicable to him.

(5) A dealer registered under this section may, subject to the provision of sub-section (4) apply not less than six months before the end of a year to the Assessing Officer for cancellation of such registration to take effect at the end of the year in which the application for such cancellation is made, and the said authority shall, unless the dealer is liable to pay tax under section 8, cancel the registration accordingly. Registration of dealers is very important as tax is collected from registered dealers. Successful operation of Sales Tax depends on the registration of dealers. Sec. 11, 12 and 13 provides for registration of dealers to make them liable to pay tax. The Assam general Sales Tax Act, 1993 provides three types of registration of a dealer. Compulsory Registration, Registration by Assessing Officer, and Voluntary Registration. Compulsory Registration - Section 11 requires every dealer who is liable to pay tax under the Assam General Sales Tax Act to get himself registered and possess a certificate of Registration. The Assessing Officer after receipt of the application and after necessary inquiry shall register the applicant as dealer. Registration by Assessing Officer - Sec. 12 provides that where the Assessing Officer is of the opinion that any dealer is liable to get registration but failed to do so he may require such dealer to apply for registration. The Assessing Officer may take any other action against such dealer as per provision of the Act. But before taking any action the Assessing Officer shall have to give notice about his intention and also shall give the dealer a reasonable opportunity of being heard. The State Govt. by Rules also provide that any dealer or class of dealers whose gross turnover exceeds the prescribed limit shall apply for registration in spite of the fact that such dealers may not be liable to pay tax under this Act. Voluntary registration - Sec. 13 requires that any dealer whose gross turnover during a year exceeds the amount prescribed and any person who intends to establish a business in the State for the purpose of manufacturing goods of a value exceeding the prescribed amount to get himself registered in spite of the fact that such dealer is not liable to pay tax. The taxable quantum under the Act has been fixed at Rs. 100,000/- in

case of a dealer being a lessor under the operating lease and in respect of any other dealer or contractor or lessor. Relevant Rules for registration are Rule 21,22 and 23. The application for registration shall have to be made in Form II and shall have to be signed and verified in the manner specified in Sec. 16 (5).

14. Certificate of Registration :-

(1) A dealer registered under section 11 or section 12 or section 13 shall be granted a certificate of registration in such form as may be prescribed which shall specify the class or classes of goods in which at the time of the grant of the said certificate the dealer carries on business, or the nature of his business as a contractor a lessor, as the case may be, and such other particulars as may be prescribed.

(2) The Assessing Officer shall cancel the certificate of registration when-

- (i) the business in respect of which the certificate was issued has been discontinued or transferred, or
- (ii) the liability to pay tax in respect of such business has ceased under this Act.

15. Security to be furnished or licence, permit, etc. to be obtained in certain cases :-

(1) Subject to any rule framed in this behalf the Assessing Officer may, as a condition of the grant of registration to a dealer or at any time after such grant, for reasons to be recorded in writing and giving the dealer an opportunity of being heard, require him to furnish in the prescribed manner and within the time specified by him such security or such additional security as may be considered necessary -

(a) for the purpose and timely payment of the amount of any tax or other sum payable under this Act; or

(b) for the proper use and safe custody of any declaration furnished or any form prescribed under sub-section (2) of section 10 supplied under this Act.

(2) The Assessing Officer may, for good and sufficient cause and after giving the dealer an opportunity of being heard, by order forfeit the whole or any part of the security furnished under sub-section (1) for the recovery of any amount referred to in clause (a) of sub-section (1) or sub-section (4) remaining unpaid or of any loss caused to the State Government by any negligence or wilful default on his part in ensuring the proper use of safe custody of any declaration or form referred to in clause (b) of that sub-section.

(3) Where, by reason of an order under sub-section (2) the security furnished by the dealer is forfeited in whole or is rendered insufficient he shall furnish fresh or further security of the requisite amount or shall make up the deficiency, as the case may be in such manner and within such period as may be specified in the order.

(4) Without prejudice to the requirements under this Chapter, the State Government may, with a view to preventing avoidance or evasion of tax or for facilitating the assessment and collection of tax by rules made in this behalf, require any dealer or class or classes of dealers to obtain from the Assessing Officer, a licence, permit, approval authorisation or recognition or any other document by whatever name called in respect of such dealings in such goods as may be provided in the rules in such manner and within such time as may be prescribed and further require that such dealer or class of dealers to furnish such security or additional security as may be prescribed. Relevant Rule - 24 The word security has not been defined in the Act. According to Oxford Dictionary Security means Secure State of feeling, that serves as a guard or guarantee, thing deposited or hypothecated for forfeiture if a loan or undertaking is not repaid or fulfilled. Sec. -15 provides for collection of Security. The assessing Officer may require any dealer to furnish security before the registration is granted. Additional security can also be demanded wherever considered necessary. The security may be collected on two grounds :-

(1) for the purpose of timely payment of the amount of tax payable under the act and

(2) for the proper use and safe custody of any declaration form issued under the Act. Rule 24 of the Assam General Sales Tax Rules, 1993 provides three ways for furnishing security (1) By depositing in the Designated Bank the amount of security fixed by the assessing officer (b) by furnishing before the assessing authority a Bank guarantee from a nationalised bank agreeing to pay to the State Government on demand the amount of security fixed by the assessing officer, (c) by furnishing National Savings certificate or Kishan Vikash Patra. The amount of security may be upto the amount equivalent to expected tax payable in a year or paid in any previous year. The security so furnished may be adjusted in case of default of payment of any tax, penalty or other amount due under the Act. After adjustment, additional security may be asked to make up the shortfall. Sec. 57 (a) provides that whoever carries on business as dealer without furnishing Security as provided under Sec. 15 shall be prosecuted for the offence committed. And such punishment shall be simple imprisonment for a term upto six months or with fine upto Rupees one thousand or with both. It is clear from the language of section 15 that security has been intended to be furnished to ensure proper and timely payment of tax and for proper custody of declaration forms. The order for demand of security from a dealer before registration or after registration has to be made in writing and has to state the reasons for such demand. If the security is arbitrary or unconnected with the reasons which have impelled the taxing officer to demand security or is disproportionately large, the demand for security would turnout to be bad (Orissa Store vs. Assistant Sales Tax Officer (1973) 31 STC Orissa 516. In Nandlal Raj Kishan vs. Commissioner of Sales Tax Delhi and anr. (1961)

12 STC, SC 324 it was held that the amount that could be demanded as security must depend on the nature of the business and its turnover and must have relation to the payment of tax for which the person concerned might become liable under the Act. Similar provisions for demand of Security and circumstances under which security can be demanded is provided under the Rajasthan Sales Tax Act, 1954. It was held by the Rajasthan High Court in the case of Delhi Cloth and General Mills Co. Ltd. vs. The State of Rajasthan and others 45 STC 128. Raj, that although the demand for security is a matter of discretion it has to be exercised in each case on sound principles and it should be exercised judiciously and not arbitrarily. It is not the intention behind the section that security should be demanded in all cases irrespective of any considerations. Committing default in payment of tax due, misuse of declaration forms and carrying of hazardous business or dealing in any such commodity that may suddenly result in losses may be case requiring to safeguard the interests of the revenue for future. In Surja Mohan Chakravorty and ors. vs. The State of West Bengal and others, 39 STC 462, Cal. power to demand reasonable security was also discussed and it was held that even if the registered dealer had goodwill and had accordingly business dealings with firms or concerns of repute and he was neither a defaulter in payment of taxes nor in filing the returns, nevertheless if on information subsequently coming into the possession or the knowledge of the authorities that the position disclosed either in returns or on payment of taxes was unreal the authorities would be justified in exercising the power to issue show cause notice for the demand of Security.

CHAPTER 5

RETURN, ASSESSMENT AND RE-ASSESSMENT

16. Payment of Tax and Return :-

(1) Tax payable under this Act shall be paid in such manner and at such intervals as may be prescribed:

Provided that different intervals may be prescribed for different categories of dealers.

(2) Any payment of tax made under sub-section (1) shall be accompanied by a statement in the prescribed form of the turnover of sales or of purchases in respect of which the tax is paid.

(3) Every registered dealer and every dealer who may be required so to do by the Assessing Officer by notice issued in the prescribed manner shall furnish in addition to the statement or statements if any furnished under sub-section (2) an annual return in the prescribed form accompanied by such statement as may be prescribed within such time as may be prescribed.

Provided that the State Government may by rules framed in this behalf require any dealer or class or classes of dealer to file apart from the annual return, a quarterly return in such form, in such manner and within such time limit as may be prescribed.

(4) If any dealer has not furnished a return within the time allowed under sub section (3) or, having furnished a return under that sub section, discovers any omission or other error therein, he may without prejudice to the charge of any interest or penalty under Chapter VI furnish a return or a revised return, as the case may be, at any time before the assessment is made and such return shall be accompanied by receipt showing payment of tax due, if any, on the basis of such return.

(5) Every return under this section shall be signed and verified in the prescribed manner,-

(a) In the case of an individual, by the individual himself, and where the individual is absent from India by the individual concerned or by some person duly authorised by him in his behalf and where the individual is mentally incapacitated from attending to his affairs by his guardian or by any other person competent to act on his behalf;

(b) In the case of Hindu undivided family by the Karta and where the karta is absent from India or is mentally incapacitated from attending to his affairs by any other adult member of such family;

(c) In the case of a company or local authority, by the Principal Officer thereof;

(d) In the case of any other association, by any member of the association or the Principal Officer thereof; and

(e) In the case of any other person, by that person or by some person competent to act on his behalf. Relevant Rule - 25 Submission of return by dealers is a statutory requirement. Return reflects the total turnover made by a dealer within a period upon which the assessing authority determines the tax payable by a dealer. Rule 25 of the Assam General Sales Tax Rules, 1993 requires every registered dealer or any dealer liable to pay tax whose turnover in any assessment year exceeds Rs 2 (two) lakhs to submit a monthly statement in Form V before the assessing officer. Such monthly statement shall be submitted before the expiry of the next succeeding month and shall be accompanied by a receipt showing the full payment of tax payable as per statement. The due date for submission of the monthly statement for a particular month shall be the last date of the following month. If the amount paid by a dealer is less than the amount payable as per statement, the assessing officer shall serve a notice of demand requiring him to pay within the time and manner specified in the notice. In case of other dealers whose gross turnover remains less than the amount of Rs. 2 (Two) lakhs are liable to submit quarterly statement of his turnover in Form V within a month after the end of the particular quarter together with a receipt showing payment of tax due which is as follows : Quarter ending 30th June - within the month of July

Quarter ending 30th September - within the month of October Quarter ending 31st December - within the month of January Quarter ending 31st March - within the month of April. The assessing officer may assess any dealer provisionally for the month and the quarter to the best of his judgement after recording the reasons where a dealer does not submit a statement before the due date or the statement submitted by a dealer appears to be incorrect and incomplete. Failure to submit monthly or quarterly statement or submission of incorrect and incomplete statement may lead to provisional assessment to be made by the assessing officer to the best of his judgement. The contractors are however not required to submit a monthly or quarterly statement. Every dealer in addition to furnishing monthly and quarterly statement are under obligation to submit an annual return in Form VI within two months after the close of the year i.e. within 31st day of May. The dealers whose turnover exceeds Rupees Forty Lakhs are required to get their accounts audited and in such cases Annual return shall be submitted by 31st day of October. The assessing officer after recording the reasons in writing may also call for quarterly and half yearly return from a dealer along with full payment of tax on the basis of such return before the expiry of a year. In case any dealer discontinues his business during the course of a year shall submit his return in Form VI within 15th day from the date of discontinuation of his business. If any dealer fails to submit a monthly statement or quarterly statement before the due date or submits incomplete or incorrect statement the assessing authority may proceed to make provisional assessment of such dealer to the best of his judgement. The assessing authority may also make best judgement assessment where a dealer fails to furnish annual return or having furnished the return fails to comply with the terms of notice issued. The phrase to the best of judgement implies a consideration of something that is before the authority. An assessment, to be to the best of judgement of the assessing authority, cannot be mere guesswork but an honest guesswork, there must be material before him which must furnish the basis for the estimate. (Madugula Papayya vs. Province of Madras (1967) 7 STC 180 (Andhra). Where the best judgement assessment power has been conferred, the limits of the power are implicit in the expression "best of his judgement", Judgement is a faculty to decide matters with wisdom truly and legally. Judgement does not depend upon the arbitrary caprice of a judge, but an settled and invariable principles of justice. Though there is an element of guess work in a best judgement assessment it shall not be a wild one, but shall have reasonable nexus to the available material and the circumstances of each case (State of Kerala vs. C. Velukutty (1966) 17 STC 465, 470 (SC). It is statutory requirement that before making such assessment the dealer must be given an opportunity of being heard.

17. Assessment :-

(1) The amount of tax payable by a dealer under this Act shall ordinarily be assessed separately for each year: Provided that the Assessing Officer, if he considers it necessary so to do, subject to rules, if any, made in this behalf make an assessment of the tax due from any dealer for a part of the year or a provisional or advance assessment on the basis of the estimated turnover before the expiry of any year.

(2) Where a return has been furnished under section 16, the Assessing Officer may, in the case of such classes of registered dealers as may be prescribed and subject to such conditions as may be prescribed, make an assessment of tax payable by the dealer on the basis of the return furnished by him and the documents accompanying such return, without requiring the presence of the dealer or the production by him of any evidence in support of the return.

(3) The Assessing Officer may -

(a) in a case where an assessment has been made under subsection (2) subject to such conditions as may be prescribed, and

(b) in a case not falling under sub-section (2) where a return has been furnished, Serve on the dealer a notice in the prescribed form requiring him on the date and at the place specified therein, to appear before him and to produce or cause to be produced any evidence on which he may rely in support of his return, or produce or cause to be produced such accounts or documents as the Assessing Officer may specify in such notice.

(4) On the day specified in the notice issued under sub-section (3) or as soon afterwards as may be, after considering such evidence as the assessee may produce and such other evidence on specified points as the Assessing Officer may, in the course of the hearing require and after taking into account all relevant material which he has gathered, make an assessment or, in a case where an assessment has been made under sub-section (2) a fresh assessment of the tax payable by the dealer.

(5) If a dealer fails to furnish a return as required under section 16 or having furnished the return, fails to comply with all the terms of the notice issued under sub-section (3), the Assessing Officer may to the best of his judgement assess the dealer and determine the tax payable by him on the basis of such assessment. Provided that before making assessment the Assessing Officer may allow the dealer such further time as he thinks fit to furnish the return or to comply with the terms of the notice issued under sub-section (3).

(6) If upon information which has come into his possession the Assessing Officer is satisfied that any dealer who is liable to pay taxes under this Act for any period has failed to get himself registered in the manner provided in Chapter IV or otherwise has remained unregistered, he may, serve a notice on the dealer and after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgement the

amount of tax due from such dealer for such period.

(7) A notice issued under sub-section (6) may contain all or any of the requirements which may be included in a notice under sub-section (3) of section 16 and the provisions of this Act shall so far as may be applied accordingly as if the notice were a notice issued under that sub-section. Relevant Rule - 29

18. Turnover escaping assessment :-

(2) A notice issued under sub-section (1) may contain all or any of the requirements which may be included in a notice under sub-section (3) of section 17, and the provisions of this Act shall, so far as may be applied accordingly as if the notice were a notice issued under that sub-section.

19. Time limit for completion for assessment and reassessments :-

(1) No assessment shall be made under section 17 after the expiry of three years from the end of the year in respect of which or part of which the assessment is made or, in a case where the dealer has furnished a return or a revised return under sub-section (4) of section 16 after the expiry of two years from the end of the year in which such return or revised return is received by the Assessing Officer, whichever is later. Provided that in a case falling under sub-section (6) of section 17. the assessment may be made at any time before the expiry of eight years from the end of the year in respect of which or part of which the assessment is made under that sub-section.

20. Composition of tax payable :-

The Commissioner may, in such cases or classes of cases and subject to such conditions and restrictions as may be prescribed permit any dealer or class of dealers to pay in lieu of the amount of the tax payable by him under any of the foregoing provisions a lump sum amount determined in the prescribed manner, by way of composition and any order by the Assessing Officer in pursuance of such determination shall be deemed to be an assessment duly made under this Act. The provision of Sec. 20 earlier did not come into force alongwith other provisions of the Act although the Act came into force w.e.f. 1-7-93 vide Notification No FTX. 177/89/211 dt. 11th June, 1993 published in the Assam Gazette Extraordinary dt. 11th June, 1993. However the provisions of this section came into force w.e.f. 6-1-95 vide Notification No. FTX. 178/93/39 dt. 31-12-94 published in the Assam Gazette Extraordinary No. 4 dt 6-1-95

21. Assessment in certain cases :-

Where no assessment has been made under any of the foregoing provisions within the time limits specified in section 19 then, notwithstanding anything contained in that section the assessment shall be made within four years from the date of expiry of the limitation period with prior sanction from the Commissioner.

Provided that the powers of the Commissioner to accord sanction for assessment as aforesaid shall not be delegated by him to any person appointed to assist him under sub-section (1) of section 3.

CHAPTER 6

CHARGE OF INTEREST AND IMPOSITION OF PENALTY

22. Interest payable by dealer :-

(1) If any dealer does not pay the full amount of tax payable by him under this Act by the date on which it falls due as per provisions of the Act, simple interest at the rate of two percentum per month from the first day of the month next following the said date shall be payable by him on the amount by which the tax paid, if any, by the aforesaid due date falls short of the tax payable. No interest under this section shall be payable if the amount of tax paid by the aforesaid due date is not less than ninety percentum: of the tax payable."

(2) Where any interest payable by any dealer under the foregoing provisions is not paid in full, the Assessing Officer shall determine the amount payable by an order in writing.

(3) If as a result of any proceeding under this Act the amount of tax in respect of which interest is payable by the dealer under the foregoing provisions is varied the Assessing Officer shall correspondingly reduce or enhance, as the case may be, the interest so payable. Sub-Section (1) substituted for sub-section (1), (2) and (3) and sub-section (4) and (5) renumbered as (2) and (3) w.e.f. 1-6-99 vide Notification No. LGL. 114/ 97/97 dr. 1-6-99 published in the Assam Gazette Extraordinary dt. 1-6-99. The original sub-section (1), (2) and (3) read as follows : 22A. Interest payable by dealer : (1) Where a dealer fails to pay the full amount of tax payable by him in accordance with the statements furnished by him under sub-section (2) of section 16 or the return furnished by him under subsection (3) of section 16 as may be applicable to him on or before the date or dates on which such payments were due to be paid under sub-section (1) of that section, he shall pay simple interest at the rate of two percentum for each month on the amount of the tax remaining so unpaid from the first day of the month next following the date on or before which such tax was payable upto the end of the month immediately proceeding the month in which such amount is paid in full or up to the end of the month immediately proceeding the month in which an assessment is made whichever is earlier. (2) Where a dealer fails to make payment of the full amount of the tax due on the basis of a notice of demand issued under sub-section (1) of section 25 on or before the date fixed for its payment under sub-section (2) of that section he shall pay simple interest at the rate of two percentum for each month on so much of such tax as remains

unpaid from the first day of the month next following the aforesaid due date upto the month immediately preceeding the month in which the full amount of the assessed tax is paid, or upto the month proceeding the month in which any proceeding under section 27 is commenced, whichever is earlier, whether or not the payment of such tax has been stayed or time for its payment allowed by a court or any authority under this Act. (3) Where the amount of tax referred to in sub-section (2) exceeds by ten percentum or more the amount of tax payable by him in accordance with the statement furnished by him under sub-section (2) of section 16, or the return furnished by him under sub-section (3) of section 16, or where no such statement or return has been furnished, the dealer shall pay, in addition to any interest payable by him under sub-section (1) or sub-section (2) simple interest at the rate of two percentum for each month on such excess or, as the case may be, on the entire amount the tax referred to in sub-section (2) from the first day of the month immediately following the due date for payment of tax for the period for which the assessment is made upto the end of the month immediately preceeding the month in which the assessment is made. (2) Where any interest payable by any dealer under the foregoing provisions is not paid in full, the Assessing Officer shall determine the amount payable by an order in writing. (3) If as a result of any proceeding under this Act the amount of tax in respect of which interest is payable by the dealer under the foregoing provisions is varied the Assessing Officer shall correspondingly reduce or enhance, as the case may be, the interest so payable.

23. Penalties :-

CHAPTER 7

PAYMENT, COLLECTION, RECOVERY AND REFUND OF TAX OR OTHER DUES

33. Appeal to appellate Authority and Tribunal :-

(1) A dealer or a person aggrieved by any final order passed by the Assessing Officer in the exercise of powers conferred on him by or under this Act may appeal to the Appellate Authority against such order within thirty days from the date on which the said order was served on him. Explanation - In this sub section and in sub sections (3) and (4) "final order" means an order, not being in the nature of an administrative order or interlocutory order, which determines the issues arising under this Act before the authority passing the order finally in so far as that authority is concerned.

(4) Every appeal under sub-section (1) or sub-section (2) shall be in the prescribed form and verified in the prescribed manner and shall be accompanied by such documents as may be prescribed

(5) The Appellate Authority or the Tribunal may admit an appeal after the expiration of the aforesaid period mentioned in sub section (1) or, as the case may be, in sub-section (2) if it is satisfied that the appellant has sufficient cause for not presenting the appeal within that period.

(7) The Appellate Authority or the Tribunal before whom an appeal is pending may, during the pendency of such appeal and subject to the provisions of sub-section (6) stay recovery of the balance amount of tax or penalty which is not admitted by the appellant to be due from him on such terms and on such conditions as may be specified in the order granting such stay.

(8) Any party to an appeal before the Appellate Authority may, within sixty days of the receipt of a notice that an appeal against the order of the prescribed authority has been preferred by the other party to the Tribunal, file a memorandum of cross objections in the prescribed manner against any part of order passed by the Appellate Authority and such memorandum shall be disposed of by the Tribunal as if it was an appeal. Relevant Rule - 37, 39

34. Procedure in appeal :-

(1) The Appellate Authority, as the case may be, the Tribunal shall fix a day and place for the hearing of the appeal and shall give notice of the same to both the parties to the appeal.

(2) The Appellate Authority, or as the case may be, the Tribunal may, at the hearing of the appeal, after giving the authority which passed the order under appeal an opportunity of being heard, allow the appellant to go into any ground of appeal not specified in the grounds of appeal or to produce any evidence whether oral or documentary, not produced at any earlier stage of the proceeding in so far as such ground or evidence does not relate to any facts not furnished to any claim not made before the lower authority if it is satisfied that the omission of the ground in the memorandum of appeal or the failure to produce the evidence at the earlier stage was not wilful or unreasonable.

(4) The order of the Appellate Authority or as the case may be, the Tribunal, shall be in writing and state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Appellate Authority or as the case may be, the Tribunal shall communicate the order passed by him or it to both the parties to the appeal.

35. Revision by the High Court :-

(2) The application for revision under sub-section (1), shall precisely state the question of law involved in the case and it shall be competent for the High Court to formulate the question of law or to allow any other

question of laws to be raised.

(3) Where an application under this section is pending, the High Court may, on application in this behalf, stay recovery of any disputed amount of tax or penalty payable under the order sought to be revised.

36. Revision of order by the Commissioner :-

37. Rectification of assessment and orders :-

(2) Where as a result of any order in appeal or revision under this Act any change becomes necessary in the order of assessment or penalty, the Appellate or Revision Authority may direct the appropriate authority to amend the order of assessment or penalty accordingly.

(3) Where a rectification under, sub-section (1) or amendment under sub-section (2) has the effect of reducing the tax or penalty or other sum payable by the dealer a refund shall be due to the dealer and where any further amount of tax, penalty or other sum becomes payable the same shall be collected in accordance with the provisions of this Act.

(4) Where any such rectification has the effect of enhancing the assessment, a notice of demand shall be issued for the sum so payable,

38. Exclusion of time taken for obtaining copy :-

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the notice of the order complained of was served and, if the dealer or person aggrieved by the order was not furnished with a copy of the order when the notice of the order was served on him, the time required for obtaining a copy of such order shall be excluded.

39. Bar to certain proceedings :-

Save as provided in this Chapter, no assessment made and no order passed under this Act or the rules made thereunder shall be called in question before any court and no prosecution, suit or other proceedings shall lie against the State Government or any officer thereof for anything in good faith done or intended to be done under this Act.

CHAPTER 7

APPEAL, REVISION, DETERMINATION AND RECTIFICATION

33. Appeal to appellate Authority and Tribunal :-

(1) A dealer or a person aggrieved by any final order passed by the Assessing Officer in the exercise of powers conferred on him by or under this Act may appeal to the Appellate Authority against such order within thirty days from the date on which the said order was served on him. Explanation - In this sub section and in sub sections (3) and (4) "final order" means an order, not being in the nature of an administrative order or interlocutory order, which determines the issues arising under this Act before the authority passing the order finally in so far as that authority is concerned.

(4) Every appeal under sub-section (1) or sub-section (2) shall be in the prescribed form and verified in the prescribed manner and shall be accompanied by such documents as may be prescribed

(5) The Appellate Authority or the Tribunal may admit an appeal after the expiration of the aforesaid period mentioned in sub section (1) or, as the case may be, in sub-section (2) if it is satisfied that the appellant has sufficient cause for not presenting the appeal within that period.

(7) The Appellate Authority or the Tribunal before whom an appeal is pending may, during the pendency of such appeal and subject to the provisions of sub-section (6) stay recovery of the balance amount of tax or penalty which is not admitted by the appellant to be due from him on such terms and on such conditions as may be specified in the order granting such stay.

(8) Any party to an appeal before the Appellate Authority may, within sixty days of the receipt of a notice that an appeal against the order of the prescribed authority has been preferred by the other party to the Tribunal, file a memorandum of cross objections in the prescribed manner against any part of order passed by the Appellate Authority and such memorandum shall be disposed of by the Tribunal as if it was an appeal. Relevant Rule - 37, 39

34. Procedure in appeal :-

(1) The Appellate Authority, as the case may be, the Tribunal shall fix a day and place for the hearing of the appeal and shall give notice of the same to both the parties to the appeal.

(2) The Appellate Authority, or as the case may be, the Tribunal may, at the hearing of the appeal, after giving the authority which passed the order under appeal an opportunity of being heard, allow the appellant to go into any ground of appeal not specified in the grounds of appeal or to produce any evidence whether oral or documentary, not produced at any earlier stage of the proceeding in so far as such ground or evidence does not relate to any facts not furnished to any claim not made before the lower authority if it is satisfied that the

ommission of the ground in the memorandum of appeal or the failure to produce the evidence at the earlier stage was not wilful or unreasonable.

(4) The order of the Appellate Authority or as the case may be, the Tribunal, shall be in writing and state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Appellate Authority or as the case may be, the Tribunal shall communicate the order passed by him or it to both the parties to the appeal.

35. Revision by the High Court :-

(2) The application for revision under sub-section (1), shall precisely state the question of law involved in the case and it shall be competent for the High Court to formulate the question of law or to allow any other question of laws to be raised.

(3) Where an application under this section is pending, the High Court may, on application in this behalf, stay recovery of any disputed amount of tax or penalty payable under the order sought to be revised.

36. Revision of order by the Commissioner :-

37. Rectification of assessment and orders :-

(2) Where as a result of any order in appeal or revision under this Act any change becomes necessary in the order of assessment or penalty, the Appellate or Revision Authority may direct the appropriate authority to amend the order of assessment or penalty accordingly.

(3) Where a rectification under, sub-section (1) or amendment under sub-section (2) has the effect of reducing the tax or penalty or other sum payable by the dealer a refund shall be due to the dealer and where any further amount of tax, penalty or other sum becomes payable the same shall be collected in accordance with the provisions of this Act.

(4) Where any such rectification has the effect of enhancing the assessment, a notice of demand shall be issued for the sum so payable,

38. Exclusion of time taken for obtaining copy :-

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the notice of the order complained of was served and, if the dealer or person aggrieved by the order was not furnished with a copy of the order when the notice of the order was served on him, the time required for obtaining a copy of such order shall be excluded.

39. Bar to certain proceedings :-

Save as provided in this Chapter, no assessment made and no order passed under this Act or the rules made thereunder shall be called in question before any court and no prosecution, suit or other proceedings shall lie against the State Government or any officer thereof for anything in good faith done or intended to be done under this Act.

CHAPTER 9

ACCOUNTS, INSPECTION, SEARCH AND SEIZURE, RESTRICTIONS ON MOVEMENT OF GOODS AND POWER TO CALL FOR INFORMATION

40. Maintenance of accounts :-

(1) Every dealer shall keep a true and complete account in respect of all goods, produced, raised, manufactured, processed, bought, sold or delivered or transferred by him and if the Assessing Authority considers that such account is not sufficiently clear and intelligible to enable him to make a proper check of the return or a proper determination of taxable turnover during any period, the said authority may, without prejudice to his powers of assessment under this Act, direct the dealer or such person to produce and maintain accounts in such manner as may be required.

41. Preservation of books of accounts, documents etc :-

All books of accounts and documents referred to in sub-section (1) of section 40 and all declarations and other documents laid down under sub-section (2) of section 10 shall be preserved by the dealer for a period of not less than eight years from the end of the year to which they relate.

41A. Form of accounts :-

Every dealer or person who is required to keep accounts by sub-section (1) of section 40 shall.

(a) Keep an account of purchases in such form as the Commissioner may lay down by a notification, and shall also preserve all invoices, bijaks, challans and other documents supporting purchases for a period of not less than eight years after the completion of assessment, appeal or revision for the year whichever is later; and

(b) issue a challan in respect of all transfer of goods from his place of business otherwise than as a result of sale in such form as the Commissioner may by notification lay down.

42. Furnishing of information by clearing and forwarding agent etc :-

(1) Every clearing, booking or forwarding agent or any other person transporting goods who during the course of his business handles documents of title to goods for or on behalf of any dealer or a person holding certificate under section 14 shall furnish to the prescribed authority true and complete particulars and information and shall maintain true and complete accounts, registers and documents in respect thereof, and if the prescribed authority considers that such accounts, registers and documents are not sufficiently clear and intelligible the said authority may direct any clearing, booking or forwarding agent or dalal or the persons transporting goods to produce and maintain accounts in such manner as may be required.

(2) Such accounts shall, on demand, be produced before the prescribed authority who may take or caused to be taken such extracts as he may consider necessary.

(3) A person transporting goods shall carry a declaration in such form as may be prescribed * * * supported by either a cash memo, a bill or a challan, in case the movement is otherwise a result of sale, in respect of goods which is being transported on a goods carrier, or a vessel and shall produce such challan, cash memo or bill alongwith the aforesaid declaration of demand before the prescribed authority.

43. Furnishing of information by owner of warehouses godowns etc :-

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, every owner of warehouse, godown or any other such place, who stores goods for hire or reward shall maintain or cause to be maintained a correct and complete account indicating the full particulars of the person whose goods are stored and the quantity, value, date of receipt and date of delivery of such goods.

(2) Such accounts shall, on demand, be produced before the prescribed authority who may take or cause to be taken such extracts therefrom as he may consider necessary.

(3) If any owner of a warehouse or godown or any other such person who stores goods for hire or reward, contravenes any of the provisions of sub-section (1) or (2) in a manner likely to lead to evasion of any tax payable under this Act, the prescribed authority may, without prejudice to any action which may be taken for abetment of an offence under section 62 direct, after giving an opportunity of being heard * * * that such an owner or person shall pay by way of penalty a sum not exceeding five hundred rupees. Relevant Rule - 40

44. Production, inspection, and seizure of accounts documents and goods and search of premises :-

(1) Subject to such rules as may be made by the State Government under this Act, any authority, appointed under sub-section (1) of section 3, may either before or after assessment, require any dealer to produce before it or him any accounts, registers or documents or to furnish any information relating to the financial transactions of the dealer, the profit derived from such transactions and the stock of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer and the dealer shall comply with such requirement.

(2) Subject as aforesaid, all accounts registers and documents relating to the financial transactions of a dealer, the profit derived from such transactions and all goods kept in any place of business of any dealer shall at all reasonable times, be open for inspection by any authority appointed under sub-section (1) of section 3 and the dealer shall render all possible assistance to such authority in carrying out the inspection. Explanation - such authority may take or cause to be taken such copies of, or extracts from the accounts, registers or documents as such authority may consider necessary.

(7) An authority appointed under section 3 may require the assistance of any public servant or police officer in making search and seizure or for safe custody of goods seized under the section and such public servant or police officer shall render necessary assistance in the matter.

45. . :-

Constitution of vigilance or Enforcement Wing Notwithstanding anything contained in any other provisions of the Act, the State Government may, by notification, constitute under such terms and conditions as may be prescribed a Bureau of Investigation or Vigilance or Enforcement Wing, by whatever named called, consisting of officers appointed under sub-section (1) of section 3 for the purpose of collection of intelligence, enquiry and investigation in connection with evasion of taxes and other violations of provisions of the Act.

46. Restrictions on the movement of goods :-

(1) No person shall transport or authorise the transport of from any railway station, steamer station, airport, post office or any other place whether of a similar nature or otherwise notified in this behalf by the State Government, any consignment of such goods as may be specified by the State Government, from time to time by notification in the Official Gazette exceeding such quantities in such notification, with a view to ensure that there is no evasion of any tax payable under the Act.

(15) When a goods vehicle or boat coming from nay place outside the State of Assam and bound for any other place outside the State and carrying the goods passes through the State, the driver or other person in charge of such vehicle or boat shall apply to and obtain a transit pass in such form and in such manner as may be prescribed from the officer-in-charge of the entry check-post or barrier after his entry into the State of Assam

and deliver it to the officer-in-charge of the exit check-post or barrier before his exit from the State or any other officer as may be directed, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or the person in charge of the goods vehicle or boat. When the goods carried by such goods vehicle or boat are after their entry into the State transported outside the State by any other goods vehicle or conveyance, the onus of proving that goods have actually moved out of the State shall be on the owner or person in charge of the goods vehicle or boat and all the provisions of this Act shall so far as may be applicable as if such transporter or carrier of the driver or other person in charge of the vehicle were a dealer within the meaning of clause (10) of section 2. Explanation - In a case where a vehicle owned by a person is hired for transportation of goods by some other person, the hirer of the vehicle shall, for the purposes of this section, be deemed to be the owner of the vehicle.

46A. Registration of Transporter, carrier etc :-

(1) For carrying out the purposes of section 46 every Transporter, carrier or Transporting Agent, operating its transport business relating to taxable goods in Assam, shall be required to obtain a Certificate of Registration in the prescribed manner from the Commissioner or any officer appointed under section 3 to assist him, on payment of such fees as may be prescribed.

(2) Every transporter, Carrier or transporting agent shall transport and deliver the goods as per provisions of the Act and the rules framed thereunder and shall furnish to the Assessing Officer such particulars or information as may be prescribed.

46B. Power to purchase goods in case of under valuation of goods :-

(2) The price payable for purchase of such goods shall be the total price as mentioned in the invoice, challan, stock transfer memo or any other related documents plus the cost of transportation.

(3) The person, in possession of such goods, shall be bound to sell the goods to such officers and if he refuses, fails or does not deliver the goods, he shall be liable to a penalty, which shall be double the amount of difference between the prevailing market price or Maximum Retail Price in the opinion of such Officer and the price offered to such person for purchase of such goods.

(4) The Officer purchasing the goods, shall dispose of such goods in public auction and the sale proceeds shall be deposited into Government Account. Relevant Rule - 43B Sec 46B inserted vide Assam Act. No. XI of 2002 published in the Assam Gazette Extraordinary dt. 10-5-2002.

46C. Payment of full value of seized goods by the custodian on failure to deliver the seized goods :-

Where any person accepts custody of any goods seized under section 44 or section 46 and thereafter fails to deliver such seized goods to the seized authority in the same condition, such person shall be liable to pay to the seizing authority the prevailing market value of such seized goods in the State of Assam. Sec 46C inserted vide Assam Act No. XI of 2002 published in the Assam Gazette Extraordinary dt. 10-5-2002.

47. Power to call for information :-

(1) For carrying out the purposes of this Act, the Commissioner may subject to such restrictions and conditions as may be prescribed and subject to the provisions of any other law for the time being in force, require any person including a banking company or post office or railway or any transporter or carrier or clearing, forwarding or transporting agent to furnish such information or statement as may be useful for or relevant to any investigation or enquiry into any alleged or suspected evasion of any tax payable under this Act by any dealer or person or to any proceedings under this Act or examine any accounts, registers, documents or other records in the possession of such person.

(2) The State Government may by Rules require a carrier or a clearing, forwarding or transporting agent to obtain a license in the prescribed manner and to furnish to the Commissioner from time to time such information as may be prescribed.

48. Power to take evidence on oath etc :-

CHAPTER 10
RESPONSIBILITIES AND LIABILITIES OF A DEALER IN SPECIAL CIRCUMSTANCES

49. Furnishing information regarding change in the business- If any dealer liable to pay tax :-

(a) sells or otherwise disposes of his business or any part of this business or effects or comes to know of any other change in the ownership of the business; or

(b) transfers his business by way of lease; or

(c) discontinues his business or changes his place of business or the location of his warehouse or opens a new place of business or warehouse; or

(d) changes the name or nature of his business or effects any change in the class or classes of goods in which

he carries on his business and which in the case of a registered dealer is or are specified in his certificate of registration; or

(e) succeeds to any business by bequest, inheritance or otherwise; or

(f) being a company, society, club, firm or other association or body, effects any change in its constitution or the constitution of its Board of Directors, He or it shall, within the prescribed time and in the prescribed manner, inform such authority as may be specified in the rules, in writing accordingly, and if any dealer dies, his legal representative shall in the like manner inform the said authority. Relevant Rule - 40A

50. Information regarding officers responsible for the affairs of the business :-

Every registered dealer shall, in the prescribed manner and within the prescribed time, send to such authority as may be specified in the Rules, a declaration in the prescribed manner and form stating the names of the Principal Officer, Manager and of all officers or other designation who are responsible for ensuring compliance with the provisions of this Act for and on behalf of such dealer. Relevant Rule - 40A

51. Transfer of business :-

(1) Where the business of a dealer registered under this Act is transferred by sale, gift, bequest, inheritance or otherwise or is transferred by way of lease and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall for all purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered (in the case of a lease for so long as the lease subsist) as if the certificate of registration of such dealer had initially been granted to the transferee or the lessee and the transferee or the lessee shall be entitled to apply to the Assessing Officer within the prescribed time for the amendment of the certificate of registration accordingly.

(2) Where the business of a dealer not registered under this Act is transferred by any of the modes referred to in sub-section (1), the transferee or lessee as the case may be, whether he is a registered dealer or not, shall be liable to pay tax interest, penalty or other dues payable by the transferor which remains unpaid on the date of such transfer (except liabilities under this Act already discharged by the transferor) and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) in case to which the provisions of sub-section (1) or subsection (2) apply, the transferor shall also, jointly and severally with the transferee be liable to pay the tax, interest, penalty or other dues, if any, payable for the period up to the date of such transfer whether such tax, interest, penalty or other dues has been assessed before or after such transfer. Relevant Rule - 40A

52. Legal representative of deceased person :-

(1) Where a dealer or person dies, his legal representatives shall be liable to pay any tax, interest, penalty or other dues which the deceased would have been liable to pay if he had not died, in like manner and to the same extent as the deceased and all the provisions of this Act shall, so far as may be, apply as if such legal representatives were the dealer or person liable to pay tax under this Act.

(3) Every legal representative shall be personally liable for any tax, interest, penalty or other sum payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the assets so charged, disposed of, or parted with. (4) The liability of a legal representative under this section shall be limited to the extent to which the estate is capable of meeting the liability. Explanation - In this section the term 'legal representative' has the meaning assigned to it in clause (II) of section 23 of the code of Civil Procedure, 1908 (5 of 1908) and includes an executor, administrator or other person administering the estate of a deceased person.

53. Assessment after partition of undivided family, disruption or dissolution of a firm or an association of persons :-

Where a dealer is a Hindu undivided family, firm or other association of persons and such family, firm or association is Hindu partitioned or disrupted or dissolved, as the case may be,-

(a) the tax, interest, penalty, or any other dues payable under this Act by such family, firm or association or persons for the period upto the date of such partition, disruption or dissolution shall be assessed or imposed as if no partition, disruption or dissolution had taken place, and all the provisions of this Act shall apply accordingly, and

(b) every person who was at the time of such partition, disruption or dissolution a member or partner of a Hindu undivided family, association of persons or firm and the legal representative of any such person who is deceased shall, notwithstanding such partition, disruption or dissolution, be jointly and severally liable for the payment of the tax, interest, penalty or other dues payable under this Act by such family, firm or association of persons for the period up to the date of such partition, disruption or dissolution, whether the assessment of such tax or the levy of such interest, penalty or other dues is made prior to or after such partition, disruption or dissolution.

54. Company in liquidation :-

(2) The Assessing Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Assessing Officer, would be sufficient to provide for any tax which is payable by the company.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidators under this section shall attach to the liquidators jointly and severally.

(6) When any private company or a public company which was previously a private company is wound up, any tax assessed on the company under this Act for any period when it was a private company whether before, or in the course of or after its liquidation, cannot be recovered than every person who was a Director of the private company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.

55. Liability of guardian and trustees, etc :-

Where the business in respect of which tax is payable under this Act is carried on by, or is in charge of, any guardian, trustee or agent of a minor or other incapacitated person on behalf of, and for the benefit of, such minor or other incapacitated person the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such minor or other incapacitated person, if he were of full age and sound mind and if he were conducting the business himself and all the provision of this Act shall apply accordingly.

56. Liability of Courts of Wards etc :-

Where the estate or any portion thereof of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any Receiver or Manager (including any person, whatever his designation, who in fact manages the business) appointed by, or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, Receiver or Manager in the like manner and to the same extent as it would be leviable upon and recoverable from the dealer if he were conducting the business himself; and all the provisions of this Act shall apply accordingly.

CHAPTER 11

OFFENCES AND PROSECUTION

57. Failure to furnish security maintain or preserve accounts, furnish accounts etc :-

Whoever

- (a) carries on business as a dealer without furnishing the security required to be furnished under section 15 or
- (b) fails to comply with the provisions of section 40 or section 41 or any Rules framed in that behalf; or
- (c) refuses to comply with any requisition made under section 32 [or 44 or 46]1; or

58. Failure to get registered etc :-

Whoever -

- (a) being liable to pay tax under this Act, fails to get himself registered, or
- (b) not being a registered dealer represents when purchasing goods, that he is a registered dealer, or
- (c) not being a registered dealer, collects any sum purporting to be by way of tax under this Act or being a registered dealer collects any sum purporting to be by way of tax on the sale of goods in respect of which he is not liable to pay tax or at a rate exceeding the rate at which he is liable to pay tax, or
- (d) being a registered dealer represents when purchasing goods or class of goods not covered by his certificate or registration that such goods are covered by such certificates, or
- (e) contravenes the requirements of sub-section (4) of section 15 or the Rules made thereunder; or
- (f) obstructs or prevents any authority under this Act from making an inspection under section 45 or exercising the power to search, seize or seal under section 44 or contravenes the provisions of section 45, or
- (g) contravenes the provisions of section 54 shall on conviction be punishable with imprisonment of either description for a term which may extend to one year or with fine or with both.
- (h) fails to stop the vehicle transporting the goods, of which he is the driver or the person in-charge or prevents or obstructs the inspection of the goods or the vehicle transporting the goods, by the in-charge of a check post or any other officer empowered in this behalf to discharge his duties. Clause (h) inserted vide Assam Act No. XI of 2002 published in the Assam Gazette Extraordinary dt. 10-5-2002

58A. Penalty for not registering as Transporter etc :-

whoever being liable to get himself registered under the provisions of section 46A of this Act, fails to do so shall, on conviction, be punishable with imprisonment of either description for a term which may extend to one year or with fine or with both. Section 58A inserted w.e.f. 2-2-2000 vide Assam Act No. XX of 1999 published in the Assam Gazette Extraordinary No. 22.

59. Failure to furnish return :-

If a dealer or person wilfully fails to furnish in due time the statement or return which he is required to furnish under sub-section (2) or sub-section (3) of section 16 and pay the tax due thereon, he shall on conviction be punishable -

(i) in case where the amount of tax which would have been evaded if the failure has not been discovered, exceeds one lakh rupees, with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with imprisonment of either description for a term which may extend to three years or with fine; or with both,

60. False statement in verification etc :-

If a person makes a statement in any verification under this Act or under any Rules made thereunder or delivers an account or statement or return which is false and which he either knows or believes to be false, or does not believe to be true, shall on conviction be punishable --

(i) in case where the amount of tax, which would have been evaded if the statement or account or return had been accepted as true, exceeds one lac with imprisonment of either description for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case with imprisonment of either description for a term which may extend to three years or with fine or with both.

61. Wilful attempt, evade tax etc :-

If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable The words 'on conviction' after the word 'shall' in section 58, 59 and 60 were inserted w.e.f. 2-5-95 by Assam Act No. XV of 1995 or impossible under this Act or fails to pay any demand on account of tax, interest or penalty payable or assessed or imposed under this Act he shall on conviction be punishable.

(i) in a case where the amount sought to be evaded or the demand on account of tax interest or penalty exceeds one lac rupees with imprisonment of either description for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) In any other case, with imprisonment of either description for a term which may extend to three years or with fine or with both. The words 'on conviction' after the word 'shall' in section 61 and 62 were inserted w.e.f. 2-5-95 by Assam Act. No. XV of 1995. The words 'or fails to pay any demand on account of tax, interest or penalty payable or assessed or imposed under this Act' in section 61 and the words or the demand on account of tax interest or penalty in sub-section -(1) inserted w.e.f. 1-6-90 vide notification no. LGL 114/97/77 dt. 1-6-99 published in the Assam Gazette Extraordinary dt. 1-6-99.

62. Abetment :-

(2) inserted w.e.f. 1-6-99 vide notification no LGL 114/97/77 dt. 1-6-99 published in the Assam Gazette Extraordinary dt. 1-6-99.

62A. Failure to Deposit tax deducted at Source :-

If a person, who is liable to deduct tax under section 27, fails to do so, or after making deduction fails to deposit the same within the time stipulated, shall on conviction be punishable -

(a) in a case where the amount of tax is below one lakh rupees with imprisonment of either description for a term not exceeding six months; and

(b) in any other case, with imprisonment of either description for a term which may extend to one year. Section 62A inserted w.e.f. 1-6-99 vide notification No. LGL 114/97/77 dt. 1-6-99 published in the Assam Gazette Extraordinary dt. 1-6-99

63. Offences by companies :-

(2) Notwithstanding anything contained in sub-section (1) Where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivances of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer, of the company such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation - For the purpose of this section- (a) "company" means a body corporate, and includes (i) a firm, and (ii) an association of persons or a body of individuals whether incorporated or not; (b) "Director" in relation to- (i) a firm, means a partner in the firm; and (ii) "any association of persons or a body of individuals" means any member controlling the affairs thereof.

64. Presumption as to books of accounts, assests, etc :-

in certain cases. - Where any books of accounts or other document or the information relating to any goods, money or other valuable article or thing referred to in sub-section (1) or sub-section (5) of section 44 is or are tendered as evidence against any person for any offence under this Act, the provisions of sub-section (5) of the section shall, so far as may be, apply in relation to such books of accounts, other documents, goods, money or other valuable article or thing.

65. Prosecution to be at instance of Commissioner :-

No person or dealer shall be proceeded against for an offence under any of the foregoing provisions except at the instance of the Commissioner.

65A. Prohibition of collection of excess tax forfeiture penalty etc :-

(1) No person shall collect any sum by way of tax in respect of sales of any goods on which no tax is payable under the provisions of this Act.

(2) No person who is not a registered dealer and not liable to pay tax in respect of any sum by way of tax from any other person and no registered dealer shall collect any amount by way of tax in excess of the amount of tax, payable by him under the provisions of this Act.

(5) The Assessing Officer shall communicate the order passed under sub-section (4) and also issue a notice of demand to the person or the registered dealer to whom a penalty was imposed for payment within the time specified by the Assessing Officer.

66. Cognizance of offences :-

(1) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act. Sec. 66 renumbered as Sec. 66 (1) and sub-sec. (2) of Sec-66 was inserted with effect from 2-5-95 by Assam Act. No. XV of 1995

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act. 2 of 1974), all offences punishable under this Act shall be cognizable.

67. Compounding of offences :-

(1) Commissioner may, subject to such conditions as may be prescribed, compound any offence under any of the foregoing provisions either before or after the institution of proceedings by requiring the person proceeded against to pay by way of composition a sum not exceeding such sum as may be prescribed.

68. Disclosure by Public servant :-

(1) If a public servant furnishes any information or produces any document in contravention of the provisions of sub-section (1) of section 69 he shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine not exceeding one thousand rupees.

(2) No prosecution shall be instituted under this section except with the previous sanction of the State Government.

CHAPTER 12

MISCELLANEOUS

69. Return etc. to be confidential :-

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this act or the laws repealed by this Act, other than proceedings before criminal court shall, save as provided in sub-section (2) be treated as confidential and notwithstanding anything contained in the India Evidence Act, 1872 (1 of 1872) no court shall, save as aforesaid, require any authority under this Act to produce before it any such statement, return, account, document, or record or any part thereof or to give evidence before it in respect thereof.

(2) if, save as provided in sub-section (3), a public servant discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

70. Return etc. not to be invalid on certain grounds :-

No return statement, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission if such return, assessment, notice, summons, or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

71. Appearance by authorised representatives :-

A dealer or person who is entitled or required to appear before an authority in connection with any proceeding under this Act otherwise than when required under section 48 to attend personally for examination on oath or

affirmation, may attend by an authorised representative.

72. Power to make rules :-

73. Laying of rules and certain notifications before the State :-

The State Government shall cause every rules made under section 72 and every notification issued amending any Schedule or making any exemption or reduction in rate under sub-section (2) of section 8 or sub-section (2) or sub-section (3) or section 9 of this Act to be laid, as soon as may be, after it is made or issued before the House of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one or more session in which it is so laid or the session immediately following and if, the House agrees in making any modification in the rule or notification or agrees that the rule or notification should not be made, the rule or the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, provided that any such modification or annulments shall be without prejudice to the validity of anything previously done under that rule or notification.

73A. General powers of the Commissioner of Taxes and his power to determine certain questions :-

(2) Subject to the provisions of this Act and the rules made thereunder, the Commissioner shall be empowered to formulate guidelines or issue administrative instructions, in particular or in general, for carrying out the purposes of the Act and the rules made thereunder.

74. Repeals and savings :-

(1) The following laws are hereby repealed

(2) Notwithstanding the repeal of the aforesaid laws by this Act and save as otherwise provided in sub-section (3) all rules, notification, registrations or other documents, forms and notice made or prescribed or issued thereunder which were in force immediately before the appointed day, and all proceedings for the assessment or reassessment of any dealer or person in respect of such period may be taken or continued as if this Act had not been passed.

75. Power to remove difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as the occasion may require, by order, do anything not inconsistent with the purpose of the Act as appear to them to be necessary or expedient for removing the difficulty.

SCHEDULE 1

LIST OF EXEMPTED ITEMS

SCHEDULE 2

TAXABLE AT THE POINT OF FIRST SALE

SCHEDULE 3

TAXABLE AT THE POINT OF LAST SALE

[See Section 8 (1) (b)]		
SCHEDULE III		
TAXABLE AT THE POINT OF LAST SALE		
[See Section 8 (1) (b)]		
<i>Sl.No.</i>	<i>Description of goods</i>	<i>Rate of Tax</i>
1	Declared goods	4 naise in

1.	Declared goods not mentioned in other Schedules.	8 paise in the rupee
2.	Other goods (other than the goods mentioned in the Schedules I, II, IV and V).	8 paise in the rupee

SCHEDULE 4
SCHEDULE

SCHEDULE 5
SCHEDULE

[See Section 8 (1) (d)]				
SCHEDULE V				
[See Section 8 (1) (d)]				
Sl.No.	Description of goods	Point of Levy	Rate of Tax	
1.	Raw jute	All the point of last purchase in the State.	4 paise in the Rupee	
2	Raw hides	At the	4	

2.	Raw hides and skin	At the point of last purchase in the State.	7 paise in the Rupee		
3.	Bones of animals, birds, reptiles and fishes	At the point of last purchase in the State.	4 paise in the Rupee		
4.	Supari (dried betelnuts) and betelnuts for conversion into supari.	At the point of last purchase in the State.	8 paise in the Rupee		
5.	Bamboo	At the point of last purchase in the	8 paise in the Rupee		

		State.			
6.	All oil seeds excluding ground nut seeds	At the point of last purchase in the State	4 paise in the Rupee		
7.	Ginger	At the point of last purchase in the State.	4 paise in the Rupee		
8.	Goods mentioned in serial numbers 65, 66, 67, 68, 69 and 70 in Schedule-II to this Act, if such goods are	At the point of last purchase in the State.	4 paise in the Rupee		

	despatched outside the State by the purchasing Oil Company otherwise than by way of sale, as provided in Explanation 2 to section 8(1) (a).			
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SCHEDULE 7
SCHEDULE

[See Section 8 (1) (f)]		
SCHEDULE 7		
[See Section 8 (1) (f)]		
Sl. No.	Description of goods	Rate

[See Section 8 (1) (f)]

Date _____

Sl.NO.	Description of goods	Rate Tax
1.	Motor vehicles including motor cars, motor taxi cabs, motor cycles, motor scooters, motorettes motor omni buses, vans and motor lorries.	8%
2.	Chassis of motor vehicles.	8%
3.	Plant and machinery including cranes.	8%
4.	Television sets, video cassette and recorders and players, prerecorded video cassette and video gram equipments.	8%
5.	Tabulating machine, calculating machines, duplicating machines, weighing machine, roneo machines,	8%

	teleprinters and computers.	
6.	Telephones.	8%
7.	Feature films.	8%
8.	Furnitures of all kinds.	8%
9.	Electronic goods, electrical goods, including instruments apparatus and appliances thereof.	8%
10.	Air conditioners and air-coolers.	8%
11.	Water coolers, refrigerators, deep freezers, bottle coolers and cold-storage plants.	8%
12.	Cinematographic cameras projectors and lighting equipments	8%
13.	Gas cylinders.	8%
14.	Crates and bottles.	8%
15.	Hording and Advertisement	8%

Sl.No.-15 Added w.e.f. 26-8-2003 vide Notification

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